



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

File: EAC-00-094-51614

Office: Vermont Service Center

Date:

MAR - 7 2001

IN RE: Petitioner:

Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

denied. This case is intended to prevent clearly unsupported invocation of numerical priority

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is described as a management company specializing in sports entertainment. The beneficiary is a professional boxer. The petitioner seeks to employ the beneficiary in the United States for a period of one year as a sparring partner for the International Boxing Federation (IBF) lightweight champion and to engage in his own matches. The director denied the petition finding that the petitioner had not established that the beneficiary qualifies for classification as an alien of extraordinary ability in athletics pursuant to the pertinent regulations.

On appeal, counsel for the petitioner argues that the petition should be approved. Additional evidence has been submitted in support of the appeal.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), provides O-1 classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability in athletics.

Service regulations at 8 C.F.R. 214.2(o)(3) state, in pertinent part, that:

(ii) *Extraordinary ability in the field of science, education, business or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

(iii) *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The petitioner presented evidence that the beneficiary was ranked

twelfth in the lightweight division of the United States Boxing Association (USBA) as of August/September 1999. The director held, in pertinent part, that the beneficiary was not ranked by the World Boxing Association (WBA), the World Boxing Council (WBC), or the International Boxing Federation (IBF), the major professional organizations for the sport of boxing. The director determined that the USBA ranking was insufficient to establish extraordinary ability in the field.

On appeal, counsel argued that the beneficiary has had two fights with IBF ranked boxers and that the USBA is an affiliate of the IBF and is thereby ranked by that organization. It was further stated that the beneficiary is champion of his weight class in his native country of Guyana.

The arguments are not persuasive. Having competed against a top competitor in a sport is not sufficient to establish that the athlete in question is recognized as having extraordinary ability which requires, in part, "*sustained* acclaim" in the field and a demonstration of having "*arisen to the very top*" of the sport.

Regarding the rankings, no evidence was submitted to explain the relationship between the various boxing organizations or the relative meanings of their rankings. The petitioner submitted an IBF ranking reflecting one of the beneficiary's opponents, Diego Corrales, ranked number one, and a USBA ranking from the same time period reflecting the beneficiary ranked number twelve. The two ranking lists are exclusive of each other. The beneficiary is not reflected in the IBF rating list. There are multiple levels in athletic rankings in most sports and it is incumbent on the petitioner to provide sufficient documentation to explain those levels and establish that he has risen to the top of the highest level.

The additional fact that the beneficiary is the national champion in Guyana is a favorable consideration, but there is no evidence that this is sufficient to establish extraordinary ability in the field of endeavor.

The O-1 classification is available only to a small percentage who have arisen to the very top of the field of endeavor. 8 C.F.R. 214.2(o)(3)(ii). The record indicates that the beneficiary is a rising athlete in his sport. The petitioner has not shown, however, that the beneficiary is within the small percentage at the very top of the field of boxing.

Finally, the statute provides O-1 classification for aliens seeking to enter the United States to continue performing services in the area of extraordinary ability. The regulations at 8 C.F.R. 214.2(o)(1)(i) further state that the classification is available to perform services relating to a specific event or events. In

this case, the stated purpose of the beneficiary's intended stay was to be employed as a sparring partner. This is considered a general support function. This is not considered a position demonstrating extraordinary ability and is not related to a specific event.

The denial of this petition is without prejudice to the filing of a petition for any other classification the alien may be eligible for.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.